

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION

BRUCE WOODS,

Petitioner,

Case No. 1:00cv803

vs.

WANZA JACKSON,

Judge Spiegel
M.J. Black

Respondent.

**JOINT MOTION ASKING THIS COURT TO
ALTER OR AMEND ITS OPINION AND ORDER OF MARCH 22, 2006
TO CLARIFY THE RELIEF GRANTED AND PETITIONER'S OBLIGATION
TO FILE A MOTION IN STATE COURT**

Pursuant to Fed. R. Civ. P. 59(e), both parties respectfully request that this Court amend its Opinion and Order of March 22, 2006 (doc. 80) granting Petitioner habeas relief to clarify both the scope of the relief granted and Petitioner's duty to initiate state-court proceedings.

Respectfully submitted,

DAVID H. BODIKER
OHIO PUBLIC DEFENDER

JIM PETRO
OHIO ATTORNEY GENERAL

s/ GREGORY W. MEYERS
GREGORY W. MEYERS (0014887)
Senior Assistant Public Defender
8 East Long Street
Columbus, Ohio 43215
Phone: (614) 466-5394
Fax: (614) 728-3670

COUNSEL FOR PETITIONER

s/ STUART A. COLE
STUART A. COLE (0020237)
Assistant Attorney General
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
Phone: (614) 644-7233
Fax: (614) 728-9327

COUNSEL FOR RESPONDENT

MEMORANDUM IN SUPPORT

Pursuant to Fed. R. Civ. P. 59(e), the parties jointly request that this Court amend its Order granting Petitioner habeas relief (doc. 80). Each party has a concern that the other agrees with; hence this joint motion.

Petitioner is concerned that this Court's Opinion and Order may be narrowly construed by the Ohio appellate court to limit review on delayed appeal to sentencing matters, excluding any issues related to Petitioner's underlying convictions.* Petitioner's concern derives from the fact that this Court's Opinion and Order twice uses the following language when describing the relief granted:

The Court further **GRANTS** Petitioner's Motion for Summary Judgment (doc. 72), and **ORDERS** that a writ of habeas corpus should issue, such that the Petitioner be released from prison unless the Hamilton County Court of Appeals grants Petitioner a delayed appeal of his sentence within ninety days of the entry of this Order.

Opinion and Order of March 22, 2006, pp. 2 and 14-15 (doc. 80) (emphasis added). Petitioner requests that any ambiguity about the scope of habeas relief be removed by deleting the phrase "of his sentence" from the Court's Order.

Respondent's concern is that this Court's Order does not, on its face, obligate Petitioner to initiate proceedings to effectuate habeas relief by filing a motion for delayed appeal in the Hamilton County Court of Appeals. Petitioner stands ready to file such a motion; and he agrees with Respondent's request to add language that would remove any concern that Petitioner could be released per this Court's Opinion and Order even if he failed to file such a motion.

* Because Petitioner's state counsel failed to perfect his appeal many years ago, his trial proceedings have never been transcribed; thus, his habeas counsel cannot say what errors may be assigned once Petitioner's delayed appeal is under way.

To address these concerns, the parties respectfully propose that the last sentence in the introductory section (doc. 80, p.2), and the last sentence of the Opinion and Order (doc. 80, pp. 14-15), be amended to read as follows (new language underlined):

The Court further **GRANTS** Petitioner's Motion for Summary Judgment (doc. 72), and **ORDERS** that a writ for habeas corpus should issue, such that Petitioner, upon his filing of a motion for delayed appeal in the Hamilton County Court of Appeals within twenty days of this Order, shall be released from prison unless the Hamilton County Court of Appeals grants Petitioner a delayed appeal of his sentence within ninety days of the entry of this Order date upon which Petitioner files his motion with that court.

Respectfully Submitted,

DAVID H. BODIKER
OHIO PUBLIC DEFENDER

s/Gregory W. Meyers
GREGORY W. MEYERS (0014887)
Senior Assistant Public Defender
Office of the Ohio Public Defender
8 East Long Street, 11th FL
Columbus, Ohio 43215
Phone: (614) 466 5394
Fax: (614) 728 3670

COUNSEL FOR PETITIONER

and

s/Stuart A. Cole
STUART A. COLE (0020237)
Assistant Attorney General
150 East Gay Street, 16th Floor
Columbus, Ohio 43215
Phone: (614) 644-7233
Fax: (614) 728-9327

COUNSEL FOR RESPONDENT

#233802